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OFFICE OF PETITIONS

In re Application of	:	
DEWAELE, PIET	:	
Application No. 10/776,736	:	DECISION ON PETITION
Filed: 02/10/2004	:	
Attorney Docket No. 226367	:	

This is a decision on the "REQUEST TO WITHDRAW ERRONEOUS HOLDING OF ABANDONMENT OR, IN THE ALTERNATIVE, PETITION TO REVIVE A PATENT APPLICATION ABANDONED UNINTENTIONALLY UNDER 37 C.F.R § 1.137(b)," filed October 24, 2007.

The application became abandoned for failure to respond timely to the nonfinal Office action, mailed on February 28, 2007, which set a three-month shortened statutory period to respond. In the apparent absence of a timely filed response, the application was held abandoned on May 29, 2007. A Notice of Abandonment was mailed on October 16, 2007.

Petitioner asserts that he filed a timely reply to the nonfinal Office action via facsimile transmission on June 28, 2007. In support of the assertion, petitioner supplied copies of the reply in the form of an amendment, accompanied by a cover sheet authorizing the USPTO to charge any necessary fees to the Deposit Account. The amendment included a certificate of facsimile transmission under 37 CFR 1.8 dated June 28, 2007, signed by A. Urbancik. Additionally, petitioner provided a Statement under 37 CFR 1.8(b)(3) by Angie Urbancik, a copy the sending unit's transmission report, and the USPTO's Auto-Reply Facsimile Transmission, acknowledging receipt of 17 pages (including the Fax Transmittal Sheet) in USPTO on June 28, 2007.

37 CFR 1.8(b) states that in the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received by the U.S. Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and

(3) Includes a statement, which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement. If the correspondence was transmitted via the Office electronic filing system, a copy of an acknowledgment receipt generated by the Office electronic filing system confirming submission may be used to support this statement.

In view of the above, the required reply is considered timely filed pursuant to 37 CFR 1.8. Accordingly, the petition under 37 CFR 1.181 is granted and the holding of abandonment is withdrawn. The application will be restored to pending status.

As the application was not in fact abandoned, the petition under 37 CFR 1.137(b) is dismissed as moot. The \$1,540.00 petition fee is unnecessary and will be refunded to the Deposit Account. Additionally, the Office finance records reveal that the USPTO mistakenly charged the Deposit Account twice in the amount of \$120.00 for an extension of time for response within the first month on June 28, 2007, and again on October 24, 2007. The overcharge of \$120.00 on October 24, 2007, will be refunded to the Deposit Account.

This matter is being referred to Technology Center Art Unit 2624 for review of the amendment filed on October 24, 2007.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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